

REFORMING PUBLIC ADMINISTRATION IN THE CONTEXT OF THE EU SERVICES DIRECTIVE IMPLEMENTATION.

A CASE STUDY ON THE BUSINESS REGISTRATION PROCESS IN ROMANIA

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Rezumat

România are de înfruntat în prezent o serie de provocări în sfera administrației publice. Fără îndoială, unul dintre factorii de presiune în acest sens este procesul de integrare în Uniunea Europeană. Astfel, începând cu anul 2007 când România a dobândit statutul de țară membră UE, construirea unei dimensiuni europene a reformei în administrația publică a devenit o necesitate.

În această lucrare ne propunem să analizăm care este impactul implementării Directivei Europene a Serviciilor asupra reformei din administrația publică, punând accentul pe măsura în care rezultatele reformei ating obiectivele stabilite de Directivă. Abordarea noastră se va baza pe descoperirea progreselor și deficiențelor înregistrate în cadrul procesului de înființare a unei societăți comerciale în Registrului Comerțului.

Cuvinte cheie: Directiva Europeană a Serviciilor, reforma administrației publice, proceduri administrative, simplificare administrativă, modernizare administrativă, Punct de Contact Unic.

Abstract

Romania is currently facing a lot of challenges in the public administration (PA) field. In this context probably one of the most pressing factors is the European Union integration process. Thus, starting with 2007, when Romania joined the European Union, it has become a necessity to build an European dimension of the PA reform process.

In this paper, we are going to show how the European Union Services Directive implementation impacts on the PA reform process and also we are going to check if the outputs of the reform match the goals set by the Services Directive. Our whole approach is based on finding out the progresses and drawbacks associated with the business opening process, within the Romanian Trade Register Office.

Keywords: EU Services Directive, public administration reform, administrative procedures, administrative simplification, administrative modernisation, Point of Single Contact.

JEL Classification: P21- Planning, Coordination and Reform

1. THE STATE-OF-THE-ART OF PUBLIC ADMINISTRATION REFORM IN ROMANIA

Starting with the '90s the Romanian Government became aware of the necessity to create a modern and efficient public administration system. Ever since, all government programs formally incorporated PA reform as supreme objective. However, this goal was not achieved yet because the changes that have been made either had a top-down logic or they were too fragmented and slow. Moreover, the government always focused on the economic reform, neglecting PA reform most of the times, although the latter is a boosting framework for the economic environment.

PA reform in Romania can be translated into reducing the role of the state, promoting professionalism within public administration, simplifying administrative procedures, increasing transparency of administrative and governmental acts, etc.

There are four major categories of PA reform drivers: economic, technological, social and institutional drivers. Economic drivers refer to the limited public purse, which demands for efficiency. Technological drivers are linked to introducing the information technology and communication into the public sector. Social drivers are centered on the citizens' increasing needs and expectations. In this paper we are going to address mainly the institutional drivers, namely Romania's integration process to the European Union structures. Thus, in the last years, the structural and functional modernisation of public

administration in Romania was triggered forward not just by the need for efficient public institutions, but also by the EU adhesion process, which gives PA reform an European dimension (Profiroiu, Andrei and Stancu, 2007). In this context it is no doubt that one of the major challenges Romanian public administration must face has to do with creating the most appropriate mechanisms, capable of supporting the continuous European Union integration process (Profiroiu, Andrei, Dincă and Carp, 2006).

One of the most pressing deadlines imposed to member states by the EU integration process is for sure the implementation of the European Union Services Directive (Directive/2006/123/EG). Thus, by December 2009, all EU countries should adopt a combination of legislative and non-legislative measures, which include amendment of existing laws, as well as the adoption of new specific pieces of legislation.

2. THE EUROPEAN UNION SERVICES DIRECTIVE

The EU Services Directive was adopted by the European Parliament in December 2006 and is aimed at creating a single European services market, by eliminating all the obstacles service providers might face.

The Services Directive is a big step forward in ensuring that both service providers and recipients benefit more easily from the fundamental freedoms guaranteed in Articles 43 and 49 of the Treaty establishing the European Community – the freedom of establishment and the freedom to provide services across borders. In order to achieve this, the provisions of the Directive aim to simplify administrative procedures, remove obstacles for services activities as well as enhance both mutual trust between Member States and the confidence of providers and consumers in the Internal Market (Handbook on Implementation of the Services Directive, 2007).

Chapter 2 of the EU Services Directive, more precisely articles 5 to 8 establish a very ambitious program of administrative simplification and modernisation, which sets three major objectives for member states:

- A) Simplification of the administrative procedures and formalities applicable to service providers;
- B) Provision of the possibility to complete procedures at a distance and by electronic means and to make information on national requirements and procedures easily accessible for service providers and service recipients
- C) Creating „unique desks”/Points of Single Contact.

The innovation brought in by the SD is the fact that when wanting to start up a business in another country, service providers do not have to deal anymore with different national, regional or local authorities, but to simply contact a "unique desk" (Single Point of Contact) which will help them with all the formalities. Moreover, member states are required to simplify as much as possible their formalities and to eliminate discriminatory treatments for foreign businessmen.

Until now, if a service provider wanted to provide services in another member state, this may have required multiple administrative paths dependent on the sphere of service activity. As a rule departments and public authorities are only responsible for very specific tasks and for specific regions. The division of administration into material and localized responsibilities leads to multiple collections and redundant saving of data both from service providers and about service providers. This causes additional work and sometimes creates inconsistent databases. This fragmentation within the public sector creates additional time and energy expenditure. Effort, energy and money are required to overcome this problem. For many service providers a lot of things are unclear, such as which proposes and formalities are actually necessary for their service activities and which government departments they must track down for explanations, notification and authorisations, enrollments and registrations. With the establishment of points of single contact, member states should ensure that service providers can carry out all procedures and formalities related to the start up and carrying out of services activities through a PSC by the end of 2009 (Silvestru *et al.*, 2009).

In order to achieve proper implementation of the Services Directive, a modern public administration is needed. The following part of our paper will present the progresses that have been made so far, in order to simplify the administrative procedures required for opening a business in Romania.

3. A CASE STUDY ON THE BUSINESS REGISTERING PROCESS IN ROMANIA

When aiming to start up a business in Romania, service operators must register their company in the Trade Register, within the Trade Register Office (TRO). Our case study focuses on a limited liability company (LLC) as this is the most common type of company in Romania, according to the National Trade Register Office (NTRO) statistics (2009) (see Figure 1).

Number of business openings according to the company
type (December 1990-February 2009)

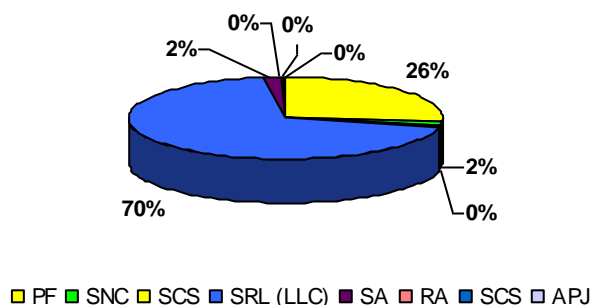


FIGURE 1

Source: NTRO website, http://www.onrc.ro/statistici/sr_2009_02.pdf

In order to keep things very simple we will discuss the case of a LLC which has one single Romanian associate.

Our aim is to reveal how the actual process of registering a LLC with a single Romanian associate actually works and to identify the main steps which must be covered, the actors involved, the necessary documents, the administrative procedures required and the deadlines that must be respected. All these aspects will be correlated with the goals set by the EU Services Directive in order to highlight the progresses that have been made so far, but also the drawbacks of the PA reform process.

Thus, a LLC- single Romanian associate start-up process involves eight major steps (Constantinescu *et al.*, 2009):

- 1) Verification and reservation of the company's name;
- 2) Verification and reservation of the company's logo (optional);
- 3) The applicant compiles the file with all the necessary documents;
- 4) The Requests Validation Department (RVD) reviewer checks the documents included in the file;
- 5) The Data Processing Department (DPD) reviewer registers the content of the file in the software application;
- 6) The Data Processing Department (DPD) reviewer sends the fiscal record requests to the Ministry of Public Finance, verifies the unicity of the company's headquarter and the unique associate status;

- 7) The clerk checks the file and sends it to the judge, who analysis the file in the court room and gives a sentence;
- 8) The Bureau for Data Processing and Editing (BDPE) reviewers request the Unique Fiscal Registration Code from the Ministry of Public Finance and send the authorisation declarations to the competent ministries;
- 9) The TRO issues the company`s registration certificate;

The first three steps of the business opening process take place in the front office, so they are visible to the applicant. The next five steps take place in the backoffice. An important detail is that four steps out of eight represent filters, namely steps number 3,4,5, and 6, which suggest that verification is not very efficient and may speed down the whole process.

As our papers` main focus is the implementation of the EU Services Directive in Romania, we made a comparative analysis between the current situation and the objectives set by the Sevice Directive.

A. The first objective set by the Services Directive („Simplification of the administrative procedures and formalities applicable to service providers”) is in our opinion very much achieved, as the current process for opening a business in Romania is quite lean. Thus, starting with January 2009 it takes only three days in order to create a LLC, instead of three weeks. Minimising the business registration process to three days was possible thanks to the following innovations:

- the verification and reservation of the company`s name is done at national level

Before January 2009, the verification and reservation of the company`s name was first done at local level. The applications were then sent at central level, where they were analysed and resolved and in the end they were sent back to the local levels. This whole complicated process used to take around three weeks; now instead the process lasts a couple of minutes.

- the TRO has delegated to the solicitant the responsability of obtaining the required authorisations from the specialized ministries.

Starting with 2004, according to Law no. 359/2004 regarding the simplification of administrative formalities, the *affidavit* are sent by the Trade Register Office to the Ministry of Public Finance, but it is the applicant duty to obtain the authorisations required by the law.

B. The second major objective set by the EU Services Directive („Provision of the possibility to complete procedures at distance and by electronic means and to make information on national requirements and procedures easily accessible for service providers and service recipients”) is also very much achieved.

Thus, the solicitans can get online information about the phases and procedures they have to follow and the documents they need in order to register a LLC in the Trade Register, by entering the website www.onrc.ro.

Solicitants can also obtain online the documents they need, from the website www.e-forms.onrc.ro. Documents can either be downloaded, printed and then hand-filled, or can be filled and sent online. The software application used in order to send them is called E-Forms (NTRO website, <http://e-forms.onrc.ro/>).

Solicitants that have submitted their file at the TRO desk or using the E-Forms application can find out the status of their file at www.onrc.ro. Thus, the applicant can use the file register number to log on the TRO website and verify if the file is being processed, if there are problems with the file (missing documents) or if the file was processed and the certificates released.

As the E-Forms (Intelligent System for Electronic Forms) application plays an important role in the simplification and modernisation of the TRO's procedures, we will present in detail this system. As a result of a new enabling legislation (Law no. 441/2006 which modified Law no. 31/1990 for commercial companies), the National Trade Register Office decided to come up with a solution in order to facilitate online transmission of requests, online submission of financial statements or other documents, as well as online request and provision of information from the Trade Register.

The solution identified by the NTRO management was the use of interactive forms, which allow online compilation, without forcing users to buy any software licence or special informatic programs. After the technical specification were drew up, the NTRO launched an open procedure. The best offer was selected in November 2006 and in December 2007 the application was ready. In order to use this application, the applicant needs a computer, an internet connection and an electronic signature.

The main advantage of E-Forms is that it allows users to attach any supporting documents and to sign each of them electronically, without obliging the solicitant to go at the TRO desk. In Table 1, we present the diagnosis analysis of the E-Form application, pointing out the most relevant strenghts and weaknesses, together with the causes that generated them.

TABLE 1- THE DIAGNOSIS ANALYSIS OF THE E-FORMS SYSTEM

Strenghts	Causes	Effects
<ul style="list-style-type: none"> Allows online submission of all the documents required for registering a new company in the trade register (requests/forms and supporting documents) Available non stop, 24 hours out of 24 hour, 365 days out of 365 days 	<ul style="list-style-type: none"> E-Forms was designed as a complex system for implementing e-government services E-Forms was designed to be available anytime, even when public institutions don't work 	<ul style="list-style-type: none"> The solicitant does not have to go at the TRO desk anymore The solicitant can submit documents anytime
Weaknesses	Causes	Effects
<ul style="list-style-type: none"> Low level of usage The cost of buying an electronic signature Available only in Romanian Weak validation system 	<ul style="list-style-type: none"> The E-Forms system was not enough promoted; many Romanians are still reluctant to using online instruments; users are not accustomed to using electronic signatures At the moment electronic signature is quite expensive, because there are only 3 providers on the Romanian market For the moment the application was designed only in Romanian because this implied lower costs The application needs furthermore improvements 	<ul style="list-style-type: none"> Less than 1% of the files that reach the TRO are sent using E-Forms Most of the E-Forms users are lawyers, because they buy one electronic signature and use it for all their clients Foreign service providers cannot use E-Forms unless they speak Romanian The application does not prevent all users' mistakes

Although the first two goals set by the Services Directive have been to a great extent reached, we identified further improvements for the business opening process:

- The verification and reservation of the company's name should be made available online in order to speed up the process more from the users' point of view (in order to register a LLC company, the TRO needs three days; however, the solicitant needs at least four days, as step

three of the business registering process is very demanding and depends on the completion of steps one and two).

- At the moment, issuing the logo registration proof takes one week, because the verification of the logo is done manually, by confronting the required logo with a catalogue that contains all the existing logos; if this process would become automatical, the logo reservation proof could be released in real time.
- Sending the fiscal record by the Ministry of Public Finance to the Trade Register Office should take according to the procedure no more than three hours; however, during busy periods this can take even 9 hours; this problem could be overcome through a better interinstitutional cooperation and shared databases between the administrative institutions involved in the business registering process.

C. The third objective set by the Services Directive (Creating „unique desks”/Points of Single Contact) has not been achieved yet. The rationale of the PSC is to offer citizens access to public services through one single access point, in order to eliminate the common labyrinth of redundant and complex administrative procedures (Strategia privind implementarea practicii ghișeelor unice în administrația publică, 2006).

The implementation of a PSC could bring major benefits for citizens, public and private sector: it would not require anymore the physical presence of the solicitor at any desk involved in the process of opening a business, it would make the actual business registering process even more dynamic and would eliminate human errors and unnecessary filters. Last, but not least, a PSC could help reduce corruption by eliminating the contact between the public servant and the citizens and could also help raising the economic competitiveness of the country, as it is a well known fact that one of the first indicators foreign investors look at when choosing to start a business overseas is the number of days required to open a business (less time needed for opening a company means less bureaucracy and corruption, strong institutional structures and performant economic environment).

4. CONCLUSIONS

At the moment the Romanian society is in the middle of an overall transformation process, which to a great extent is a consequence of the new European Union membership status.

In this context public administration system cannot be disregarded and needs to incorporate an European dimension in order to become more transparent, efficient and more citizen-oriented.

From a broad perspective, implementing the Services Directive can be seen as an important step for achieving the goal of creating the most competitive and dynamic knowledge-based economic region in the world, by 2010. From a narrow perspective, however, the Services Directive implementation can be considered a measure of reforming public administration. Thus, introducing the Services Directive into the national legal framework requires prompt and sustainable efforts of reforming current procedures, by modernising and simplifying administrative formalities and processes imposed to service suppliers.

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